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Written statement* submitted by the Physicians for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* Issued as received, in the language(s) of submission only.

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Physicians for Human Rights' Forensic Medical Evidence Supports Call for Independent Mechanism to Investigate Crimes against Rohingya in Myanmar

Summary

In September 2018, the UN Fact-Finding Mission on Myanmar will present its findings on the facts and circumstances of alleged recent human rights violations, particularly in Rakhine State. By using its medical expertise, Physicians for Human Rights (PHR) has applied three research methods to document the scope, scale, and patterns of attacks that took place against the Rohingya in late August 2017 and pushed at least 720,000 refugees into neighboring Bangladesh.

PHR's previous research indicates that the grave human rights violations committed against the Rohingya in August 2017 should be investigated as crimes against humanity (namely murder and enforced disappearances, torture, rape and other sexual violence, and forcible transfer of populations). While additional data are still being analyzed, below are preliminary findings to support the creation of an independent and impartial mechanism to collect, preserve, and analyze evidence for criminal investigations, which in turn can bring those responsible for violence against the Rohingya to justice.

PHR's Methodology

Epidemiologic Survey: PHR surveyed leaders from 604 Rohingya hamlets in the townships of Maungdaw, Buthidaung, and Rathedaung in northern Rakhine state to gather data on the morbidity and mortality rates resulting from the events of late August 2017. The survey covered events from the end of Ramadan (June 24, 2017) to the time when the Rohingya in these hamlets fled. Of the hamlets surveyed, 92% were solely Rohingya, encompassing an estimated 136,320 households and 916,399 people.1

Qualitative Research: To complement the quantitative survey data, PHR conducted qualitative interviews with 40 hamlet leaders who reported mass killings, rapes, and/or mass graves. These in-depth interviews provided context to document the scale and nature of the attacks.

Forensic Evidence Casework: PHR medical teams conducted forensic evaluations by physically examining more than 85 survivors to corroborate the survey and qualitative findings. The breadth and geographical diversity of this casework points to the widespread and systematic nature of abuses faced by the Rohingya. Drawing upon its forensic evidence casework, PHR also published an in-depth study on the village of Chut Pyin as an emblematic case to illustrate how the violence has impacted the Rohingya.

PHR conducted forensic evaluations by using an adapted version of the UN Office of the High Commissioner for Human Rights (OHCHR)'s "Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," known as the Istanbul Protocol. PHR's forensic evidence casework demonstrates a high degree of consistency between described events and physical examination findings, and with overall reports by other credible sources.

PHR's Preliminary Key Findings

For decades, the Rohingya have been stateless and subjected to a range of human rights violations, including the denial of the right to health and education, limited political participation, restrictions on freedom of movement, forced displacement, arbitrary detentions and killings, forced labor, and trafficking, among other abuses.2 In recent years, Myanmar has increasingly pressured Rohingya communities to register for National Verification Cards (NVCs), a

1 The remaining 8% of villages also included 8,255 people of other ethnicities (Mro, Rakhine, Hindu) residing in the affected areas.
2 UN Office of the High Commissioner for Human Rights (OHCHR), "Report of OHCHR Mission to Bangladesh: Interviews with Rohingyas fleeing from Myanmar since 9 October 2016," (3 February, 2017): https://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf (p.7-13).

citizenship identification process that did not offer the option to self-identify ethnically as Rohingya. As a result, many Rohingya did not participate for fear of being registered as "illegal" and expelled from Myanmar.3

PHR's survey across 604 hamlets showed that in the weeks leading up to August 2017, authorities held meetings with 91% of these hamlets. Almost all of these (93%) noted that they were asked about the NVC during the meetings, which were largely convened by Border Guard Police (89%), military (84%), and civil government officials (56%). Over two thirds of these hamlets reported that the meetings included threats of violence or reports of violence and restricted mobility in neighboring hamlets.

PHR's forensic research on the village of Chut Pyin exemplifies how this unfolded. Rohingya leaders in Chut Pyin reported that their last meeting with officials was on August 22, when they were given 24 hours to reach a collective decision to accept the NVC and were warned they would die if the community did not agree.4 When the villagers rejected the NVC the following day, the Myanmar officials said to them "Do not leave your houses. If we see you on the road, we will shoot you."5 Three days later, Chut Pyin was destroyed by Myanmar security forces and Rakhine Buddhist villagers, leaving some 400 Rohingya, including 99 children, dead or missing.

International law defines deportation or forcible transfer as the "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person."6 PHR's survey shows that the majority of hamlets within which meetings were convened during this time (81%) perceived them as threats, and over half of the respondents reported that this was one of the reasons why they fled. This demonstrates the coercive nature of a widespread and systematic policy that seemed designed to ensure Rohingya communities left Myanmar.

Violence and Injuries across Northern Rakhine State

PHR's survey indicates that Chut Pyin was an emblematic case, as these threats turned into violence in subsequent weeks across many hamlets in northern Rakhine state: from the end of June to early September 2017, 88% of the survey respondents reported incidents of violence, which led to a vast array of human rights violations. Some 91% of the hamlet leaders that reported violence noted blunt force trauma such as beatings, hitting, kicking, punches, or penetrating injuries using weapons such as machetes, knives, and sticks. Over half of these hamlets (55%) reported people shot, as well as rape and sexual assault (28%) and gang rape (9%). Moreover, 88% of those who reported violence within their hamlet stated that the Rohingya's right to freedom of movement had been affected with travel restrictions.

This survey data is supported by PHR's forensic evidence casework. Ranging from 3.5 to 74 years of age, more than 85 survivors whom PHR medically examined sustained several different kinds of injuries, with some survivors sustaining multiple injuries. These included gunshot wounds (56%); injuries from explosives or fragmented projectiles (23%); blunt force trauma, including kicking and beating (13%); and penetrating injuries such as stabbings and mutilations (9%). Of these survivors, almost a quarter now have a permanent disability and screened positive for post-traumatic stress disorder.

Three quarters of the surveyed leaders said violence in their hamlet or a neighboring hamlet was the primary reason why their community fled to Bangladesh. Other reasons leaders reported ranged from extortion (75%)7 and arbitrary arrests (71%) to health issues (38%) and lack of food (29%). The impact on the Rohingya's resources is also evident: 75% of hamlets reported fields or farms burned and/or homes torn down or destroyed, causing displacement by directly affecting the Rohingya's ability to survive in Myanmar. Moreover, the majority of hamlets (65%) reported that mosques were destroyed or burned, indicating persecution based on ethnic and religious grounds.

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3 Physicians for Human Rights, "'Please Tell the World What They Have Done to Us' - The Chut Pyin Massacre: Forensic Evidence of Violence against the Rohingya in Myanmar," July 20, 2018: https://rohingya.phr.org/resources/chutpyin/ (p.10).
4 Ibid. p.12.
5 Ibid, p.13.
6 International Criminal Court (ICC), Elements of Crimes, 2011, ISBN no. 92-9227-232-2, available at https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf (p. 6).
7 Amnesty International documented that Myanmar security forces routinely extorted money from the families of Rohingya men and boys prior to and following the August 25 attacks: Amnesty International, "'We Will Destroy Everything' Military Responsibility for Crimes against Humanity in Rakhine State, Myanmar," June 29, 2018: https://www.amnesty.org/download/Documents/ASA1686302018ENGLISH.PDF (p.30).

The Rohingya also faced violence as they fled to Bangladesh, per 64% of hamlet leaders' reports: blunt force trauma such as beatings, hitting, kicking, punches, or biting, or penetrating injuries using weapons such as machetes, knives, sticks (82%); gunshot wounds (65%); mortars/RPGs/grenades (35%); rape (27%); and gang rape (11%).

Conclusion and Recommendations

A quarter of the affected hamlets reported that the violence took place on August 25, which marked the beginning of the military-led offensive, allegedly in response to attacks by the insurgent Arakan Rohingya Salvation Army (ARSA). Over two thirds (69%) of the reported violence directly perpetrated against Rohingya hamlets took place from August 15 to September 4, when the military announced the end of its "clearance operations" against ARSA.

PHR's forensic evaluations indicate that 85% of survivors medically examined identified the Myanmar military as perpetrators of attacks on their villages. Similarly, 77% of hamlets that reported violence had observed helicopters overhead, and/or special military trucks (70%) and tanks (22%) in their hamlets in the weeks leading up to August 2017.

To date, Myanmar has failed to conduct a full and independent investigation into the violence against the Rohingya in August 2017. Moreover, there are reasonable grounds for concern about whether the "independent commission of inquiry" that the Myanmar government announced in June 2018 will be effective, given Myanmar's past efforts on accountability.8

PHR calls for an independent, impartial, and effective mechanism that can collect, preserve, and analyze evidence for criminal investigations, which in turn can establish individual responsibility for these crimes under international law. This mechanism must be given appropriate mandate, staff, resources, and overall capacity to monitor the human rights situation of the Rohingya and to assist in the building of criminal cases before appropriate judicial mechanisms.

8 Physicians for Human Rights, op cit, p.4.